

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6107

Petition of Green Mountain Power)
Corporation for an Increase in)
Rates, to take effect June 22, 1998)

Order entered: 12/17/99

ORDER RE: EXTENSION OF STAY AND
TEMPORARY RATE INCREASE PURSUANT TO
MEMORANDUM OF UNDERSTANDING

I. Introduction

Temporary rates for Green Mountain Power Corporation ("GMP" or "the Company") have been in effect, as of December 15, 1999, for one year. With today's Order, we grant the joint request of three of the parties to stay this proceeding until September 1, 2000, continue the temporary rate increase now in effect through December 31, 2000, and increase the temporary rates by an additional 3%. In reviewing the temporary rate request, the Public Service Board ("Board") is called upon to balance the competing interests of the utility's customers and its investors, creditors and employees. It is also important to keep in view the long term, and not just the short term, interests of the Company, its customers, and the public. We judge that the settlement presented in this proceeding and approved today achieves an appropriate balance among those interests.

Increasing the current temporary rates, which reflect a 5.52% surcharge, by an additional 3% will result in new temporary rate surcharge of approximately 8.7%. With the extension and modification of temporary rates approved today, GMP is expected to collect approximately \$13.6 million in revenue during calendar year 2000, above pre-existing base rates, including roughly \$4.5 million that is attributable to the additional 3% increase.

The Board concludes that continuation of the stay of proceedings and continuation of the temporary rate increase will advance the public interest by providing GMP and other involved parties the necessary opportunity to continue on-going efforts to address power supply cost issues, by buttressing the financial viability of GMP until final rates are established in this

case, and by providing for the continued delivery of safe and reliable electric service to GMP's customers. Under the Second MOU Amendment, \$1,000,000 of the revenues produced by the temporary rates will be used in the year 2000 for enhanced right-of-way maintenance and pole treatment. GMP also commits to maintain adequate utility capital investment and plant maintenance expenditures in the year 2000.

The twelve-month extension approved herein will allow the Company's management to focus its efforts on power cost mitigation efforts, including the possible sale of Vermont Yankee and the auction of the Hydro Quebec ("HQ") contract. The resolution of HQ/Vermont Joint Owners ("VJO") arbitrations, negotiations, and the planned auction of the HQ contract by the VJO may provide relief to GMP and its customers from the terms of the power purchase contract. We expect, and have every reason to believe, that GMP is striving to expedite power cost mitigation measures through all of these channels.

Approval of this agreement allows the Company to demonstrate to its creditors that it will remain on a sound financial footing during 2000. The Company projects that, with these temporary rates in effect, it will achieve earnings of 8.85% during 2000 – a level that should be sufficient to preserve the Company's access to its only present line of credit through its expiration on June 21, 2000, absent an unforeseen material adverse change in its circumstances.

II. Background and Procedural History

On May 8, 1998, GMP filed revised tariffs that would increase its retail rates by 12.9%, to produce approximately \$20.8 million in additional annual revenues. The Board suspended the tariff changes, opened this docket to investigate the proposed rates,¹ and, in October, 1998, convened technical hearings.

On December 11, 1998, the Board approved a Memorandum of Understanding ("MOU") submitted jointly in this docket by GMP, the Department, and International Business Machines Corporation ("IBM"). Consistent with the MOU, the Board stayed this proceeding until September 1, 1999, approved a temporary rate increase of 5.7% to take effect with service rendered December 15, 1998, and also approved an additional temporary rate surcharge to

1. Order of 6/15/98.

raise approximately \$670,000 in additional revenue to finance estimated 1999 expenditures for remediation of the Pine Street Barge Canal Superfund Site.² The 5.7% increase was expected to raise approximately \$9,190,000 million revenue annually.³ The schedule then-adopted contemplated a final rate order by December 15, 1999.

On September 7, 1999, the Board approved an amendment to the MOU.⁴ Consistent with the amendment, the stay of this proceeding was extended until December 15, 1999, and the temporary rates were continued pending a final order, which was then contemplated to issue by March 31, 2000. The MOU, as amended, allowed any party to request, upon showing of good cause, a further three-month extension of the stay (until March 15, 2000).

On December 3, 1999, GMP filed for Board approval a Second Amendment to the MOU ("Second MOU Amendment"), signed by GMP, the DPS, and IBM. The Second MOU Amendment provides that the stay of this proceeding would be further extended to September 1, 2000, that the existing 5.52% temporary rate increase would continue pending a final order, and that the deadline for a final rate order would be extended to December 21, 2000. The Second MOU Amendment provides for an additional three percent increase in the temporary rates, yielding approximately \$4.6 million in annualized revenue, to take effect with service rendered January 1, 2000. GMP prefiled testimony in support of the Second MOU Amendment on December 7, 1999.

The Board convened continued technical hearings in this docket on December 10 and 14, 1999, for the purpose of considering the Second MOU Amendment. At the hearings, the Board heard testimony of GMP's witnesses, Nancy R. Brock, Vice President, Chief Financial

2. Order of 12/11/98. The Consent Decree governing remediation of the Pine Street Barge Canal Superfund Site was fully executed on November 19, 1999, and filed with the U.S. District Court on November 23, 1999. Letter 11/29/99 from Jeffrey P. Trout, GMP, to Susan M. Hudson, Clerk of PSB. Consistent with the terms of the first MOU, GMP instituted the Pine Street surcharge for effect on service rendered in the month of December, 1999. The surcharge will be in effect only for the one month.

3. The Board's December 11, 1998, Order approved a 5.7% temporary rate increase to raise approximately \$9,190,000 in additional revenues. On December 15, 1998, the Company filed a compliance filing establishing an increase of 5.52% to achieve a revenue target of \$8,918,000. This change was made to account for the effect on GMP's pre-existing permanent rates of the Board's Order on Reconsideration in Docket No. 5983. Thus, the actual temporary rate increase implemented by GMP is 5.52%, excluding the temporary Pine Street surcharge.

4. Order of 9/7/99.

Officer and Treasurer of GMP, Anthony J. Kvedar, Jr., Energy and Financial Analyst for GMP, and Robert Griffin, Controller of GMP. No other parties offered testimony or evidence.

The Department's position is that GMP's testimony and evidence adequately supported approval of the Second MOU Amendment. IBM, which is a party to the Second MOU Amendment, stated its support for the approval of the Second MOU Amendment. AARP objected to the Board hearing evidence on the Second MOU Amendment on less than twelve days' notice, and requested that as a condition of approval of the Second MOU Amendment, the Board require the Company to post a bond to secure the repayment to residential customers of any future refund of the additional three percent increase in temporary rates. VPIRG concurred with the position of AARP, and also requested that consideration of rate design issues not be deferred while this docket is stayed.

III. The Second MOU Amendment

The Second MOU Amendment⁵ provides, among other items, that upon Board approval this docket would be stayed until September 1, 2000, that the deadline for the Board's decision on final rates would be extended until December 31, 2000, that GMP's temporary rates would increase 3.0% above the existing temporary rates (excluding any Pine Street Barge Canal surcharge), and that the increased temporary rates would remain in effect pending a final rate decision. The Second MOU Amendment further contemplates a status conference in the case as soon as practicable after August 1, 2000, to determine a final schedule for proceedings in this docket.

As agreed in the original MOU, and as previously ordered by the Board, the temporary rates would remain subject to refund, if the Board's final order in this docket establishes rates that are lower than the temporary ones.

Under the Second MOU Amendment, GMP has agreed not to file before September 1, 2000, a petition for any further increase in retail electric rates, although it may, if it deems necessary, file for temporary rate relief under 30 V.S.A. § 226(a).

The Second MOU Amendment provides for a provisional and non-final *pro forma* cost

5. The Second MOU Amendment is attached to this Order as Appendix 1.

of service disallowance of GMP's year 2000 HQ Contract costs in the amount of \$7,478,000. This amount is provisional and subject to adjustment by the Board at the time of a final order setting permanent rates in this Docket.

Under the Second MOU Amendment, \$1,000,000 of the revenues produced by the temporary rates will be used in 2000 for enhanced right-of-way ("ROW") maintenance and pole testing and treatment, pursuant to plans prepared in consultation with the Department's engineering staff.

The Second MOU Amendment also includes GMP's commitment to maintain its utility plant capital investment and plant maintenance expenditures at the levels specified in the financial forecasts on which the temporary rate increase is based, subject to adjustments to which the Department may agree. GMP acknowledges that this spending level, while adequate for the upcoming year, is not adequate for the long term. GMP has also agreed to report to the Department regularly on GMP's capital spending, changes to its capital spending and budgets, and plans and expenditures related to non-capital maintenance, repair, and refurbishment of transmission and distribution plant, generating plant and ROW maintenance. The Department will have an opportunity to provide comments to GMP relating to GMP's actual and projected capital and non-capital spending. GMP has also agreed in the Second MOU Amendment to prepare plans for long term capital plant investment in consultation with the Department's engineering staff, that reflect both a proper level of ongoing investment and expenditure and to implement such plans as soon as reasonably possible during 2001.

IV. Procedural Issues

AARP has raised several procedural issues in opposition to Board approval of the Second MOU Amendment. AARP contends, first, that 30 V.S.A. § 225(a), as interpreted by the Board in Docket No. 5983, precludes GMP from modifying its existing rate filing to seek the additional three percent increase unless both (1) the costs that GMP seeks to recover in the modified rate request have been incurred or would be in effect during the entire period that the modified rates would be in effect, and (2) the modification is necessary for GMP to provide

adequate and efficient service.⁶ However, as AARP apparently acknowledges,⁷ GMP's request for an additional three percent rate increase is a request for temporary rates under 30 V.S.A. 226, and thus is not subject to Section 225(a)'s restrictions on updating, because those restrictions only apply to a rate request that has been filed under Section 225(a).

AARP next contends that if GMP's three percent rate increase request is not construed as a modification of its pending request for a change in permanent rates, then the hearing on that temporary rate request cannot be considered a continuation of the hearings on the permanent rates, and thus the hearing should have been held only on twelve days' notice.⁸ We disagree, and conclude that the evidentiary hearings on the Second MOU Amendment are a continuation of the hearings previously held in this docket. The statute clearly contemplates, and the Vermont Supreme Court has explicitly recognized, that a temporary rate request may be filed under Section 226 in conjunction with a permanent rate request that has been filed under Section 225. Section 225(b) provides, in relevant part, that a rate request filed under Section 225 shall not take effect without Board approval, "except when a rate change is suspended and temporary or permanent rates are allowed to go into effect pursuant to § 226(a) or § 227(a)." The Vermont Supreme Court has held that "temporary rates, if available, can take into account the dimensions of a rate request that represents justifiable needs, without compelling the Board either to allow for the interim the whole request or, on the other hand, to deny it altogether." *In re Green Mountain Power Corp.*, 142 Vt. 373, 389 (1983).

Also, in the Second MOU Amendment, GMP has requested both a continuation of the existing temporary rates and a three percent increase in those rates; if both requests are granted, the total temporary rate increase will be approximately 8.7%. This is less than the 12.9% permanent rate increase that GMP seeks in this docket. Thus, the continuation of, and three percent increase in, temporary rates is within the scope of the permanent rate relief that is the subject of this docket and that has been the subject of previous evidentiary hearings in this docket. Furthermore, there is a single evidentiary record for the permanent rate request, the previously requested (and currently effective) temporary rate increase, and the proposed

6. AARP Motion to Dismiss Temporary Rate Request at 1-2.

7. *Id.* at 2.

8. *Id.* at 2-3.

three percent increase in temporary rates; the Board and the parties may rely on any and all of that evidence in the review of GMP's requested three percent temporary rate increase.⁹

For these reasons, we conclude that the evidentiary hearings on the three percent temporary rate increase are continued hearings in this docket. As such, twelve days' notice of the continued hearings is not required. *See* 30 V.S.A. § 10(d).

We also disagree with AARP's contention that if the present hearings are not continued hearings, the general statutory requirement (30 V.S.A. § 10) of twelve days' notice of Board hearings must apply. AARP notes that the statute lists specific exemptions from the twelve-day notice requirement, and that preliminary hearings on temporary rate requests under Section 226(a) are not included among the listed exceptions. AARP further claims that the required "public notice" of a preliminary hearing under Section 226(a) must be newspaper notice, because other sections of Title 30 require public notice by newspaper.¹⁰

We conclude otherwise. Even if the hearings on the three percent temporary were not considered to be continued hearings, twelve days' notice was not required. Section 226(a) allows the Board, "after public notice and preliminary hearing," to authorize "an immediate reasonable temporary increase" in rates if required by the public interest or if necessary for the utility to provide adequate and efficient service or for the preservation of utility property. When, as here, the circumstances presented by the utility require expeditious temporary rate relief on a schedule that does not permit twelve days' hearing notice, it would defeat the legislative purpose in authorizing "immediate" rate relief if we were to require twelve days' notice. Thus, we conclude that necessarily implied in our authority under Section 226(a) is the authority to hold a hearing on a temporary rate request on shorter notice under circumstances where providing twelve days' notice would preclude effective relief.

9. This review has been greatly facilitated because the Board and the parties are informed by the evidence presented in the previous hearings in this docket. Had those prior hearings not been held, then evidence that was presented at those hearings (and thus already in the record) would have to have been presented at the current hearings on the temporary rate request, such as evidence describing and explaining GMP's revolving line of credit. All of the parties, including AARP, relied on the pre-existing evidentiary record to support their positions and factual assertions regarding the Second MOU Amendment. *See, e.g.*, tr. 12/14/99 at 28-29, 91, and AARP's Proposal for Decision on Temporary Rate Increase, 12/15/99, at 3 n. 5.

10. AARP Motion to Dismiss Temporary Rate Request at 3.

Furthermore, as the Vermont Supreme Court has observed, there is "an immense difference in scale of investigation and presentation" between temporary and permanent rate requests. *In re Green Mountain Power Corp.*, 142 Vt. 390. Providing less than twelve days' notice for this lesser scale of investigation and presentation is justified under the present circumstances.¹¹

AARP's contention that public notice under Section 226(a) requires newspaper publication is unavailing for two reasons. First, when the legislature intended to require newspaper notice, it has so provided.¹² In Section 226(a), the legislature has mandated public notice, not newspaper notice.¹³ Second, for the reasons previously stated, under the present circumstances it would have defeated the purpose of providing immediate temporary rate relief to postpone the hearing in order to arrange for notice by newspaper publication.

AARP next argues that GMP's proposal to repay any overcollections from the temporary rates through prospective rate reductions would constitute illegal retroactive ratemaking.¹⁴ In support of its argument, AARP relies on the Vermont Supreme Court's decision in *In re Central Vermont Public Service Corp.*, 144 Vt. 46 (1984). In that case, the Court stated that "unless authorized by statute, a rate that requires consumers to pay for past deficits of a utility or that requires a utility to refund to consumers a portion of its previously earned profits constitutes illegal retroactive ratemaking." 144 Vt. at 56.

GMP disputes AARP's contention. GMP claims that the Supreme Court's decision in *In re Central Vermont Public Service Corp.* resolves this issue, because in that case the Court

11. Additionally, the Vermont Supreme Court and other courts have recognized that compelling circumstances will justify a hearing on shorter notice than is usually required. *See, e.g., In re Petition of Twenty-Four Vermont Utilities*, 159 Vt. 363, 369 (1992)(Board notice given on April 26 of hearings on April 26 and April 29 was reasonable under the circumstances, given that a Board order was required by April 30); *Ellingsen MacLean Oil Co., Inc. v. First National Bank & Trust of Escanaba*, 65 B.R. 358, 362-363 (W.D. Mich. 1986), *affirmed*, 834 F.2d 599 (6th Cir. 1987), *cert. denied*, 488 U.S. 817 (1988)(in emergency situations, hearing on very short notice is justified); *Tauber v. State Board of Osteopathic Medical Examiners*, 362 So. 2d 90 (Fla. Dist. Ct. App. 1978), *cert. denied*, 368 So. 2d 1374 (Fla. 1979)(two days' notice of hearing on emergency, temporary suspension of medical license is adequate, where additional opportunity for hearing will be provided prior to final decision).

12. *See, e.g.*, 30 V.S.A. §§ 231(a), 248(a)(4)(D).

13. In addition to the actual notice provided to the parties, the Board provided public notice of the hearing by posting such notice on the Board's web site on December 8, 1999.

14. AARP Memorandum of Law re: Prospective Repayment of Temporary Rates, 12/13/99.

specifically stated that Section 226 allows retroactive rate adjustments.¹⁵

We concur with GMP. As the Court noted in *In re Central Vermont Public Service Corp.*, 144 Vt. at 56, Section 226(a) explicitly provides the statutory authority for a retroactive rate adjustment in circumstances where temporary rates exceed the rates ultimately adjudged to be just and reasonable.

AARP acknowledges that Section 226(a) does provide statutory authorization for requiring a utility to repay excessive amounts collected through temporary rates. AARP claims, however, that this statutory provision requires individually calculated, customer-specific refunds, and does not permit refunds to customer classes as proposed by GMP.¹⁶

GMP again disagrees with AARP. GMP claims that Section 226(a) does not require any refund of temporary rates that are ultimately determined to be excessive, and that thus the refund mechanism proposed in the Second MOU Amendment (which mirrors the refund mechanism set forth in the original MOU) falls well within the Board's discretionary authority to condition the granting of temporary rates.¹⁷

The language at issue in Section 226(a) provides that:

within a reasonable time prescribed by the board after the termination of such proceedings, the company shall, with interest, repay to or may credit the account of the persons from whom such changed rates shall be collected all sums collected in excess of . . . such rate as shall be determined to be just and reasonable.

In Docket No. 5702, we interpreted the virtually identical language of 30 V.S.A. § 227(b), which governs investigations into a utility's existing rates. Section 227(b) requires that a utility "shall repay to the persons from whom collected between the time the proceedings were instituted and the final order all sums which the board determines are in excess of the rates ultimately found to be just and reasonable." In Docket No. 5702, the DPS argued, as AARP does here, that the statutory language required individual refunds calculated according to the amounts that each customer actually overpaid. In our Order in that docket, we

15. GMP Reply to AARP, 12/14/99, at 1, citing *In re Central Vermont Public Service Corp.*, 144 Vt. at 56.

16. AARP Memorandum of Law re: Prospective Repayment of Temporary Rates, 12/13/99.

17. GMP Reply at 1-2.

concluded that the statutory term "persons" was a collective reference to ratepayers, rather than a reference to individual ratepayers. We stated: "The statute requires a full refund to customers, but we do not believe it requires an individually calculated refund to each individual customer, including those who have left the service territory."¹⁸ We provided the following explanation for why individually calculated refunds were not appropriate:

For several reasons we conclude that the DPS proposal for individually calculated refunds should be rejected. These include the cost, delay and probable ineffectiveness of locating individual customers. Particularly where refunds are small, the administrative cost of locating customers would consume a large portion of the refund. Even here, where the size of the refund is significant, many refunds will certainly be small, and the administrative costs still seem likely to be large. Individual retrospective calculations of the amounts due would have to be made for every current and former customer. The added delay would also be significant. Finally, effectiveness must be considered. It is probable that even assiduous efforts at tracking customers would overlook many of those who have moved to new locations.¹⁹

We also noted in a footnote that the last of these considerations "may be of less importance for smaller companies who serve only a few hundred customers."²⁰

These considerations apply with equal force to refunds (if any) of the temporary rates in the present docket. We thus conclude that individually calculated customer refunds are not required, and that the refund mechanism proposed by GMP is appropriate.²¹

V. Findings of Fact

1. Since the Board approved the original MOU in this case in December 1998, and the First Amendment in this case on September 7, 1999, GMP has engaged in and continued to

18. Docket No. 5702, Order of 2/6/95 at 18.

19. *Id.* at 19.

20. *Id.*

21. We note that it is an accepted practice among state utility commissions to issue refunds to ratepayers through prospective rate reductions or bill credits, rather than through individually calculated refunds based on each ratepayer's own prior overpayments. *See, e.g., Re Public Service Company of New Hampshire*, 81 NH PUC 523 (N.H.P.U.C. 1996)(rejected customer-specific refunds of overcollected fuel and purchased power adjustment clause rates, and instead required refunds through across-the-board future rate reductions); *Re Chesapeake and Potomac Telephone Co.*, 9 DC PSC 1 (D.C.P.S.C. 1988)(rejected customer-specific refunds of overcollected subscriber line charges, and instead required refunds through standardized credits for residential and business customers).

pursue a series of efforts to mitigate its power supply costs, reduce other operational expenses and improve operations. These efforts, which are ongoing, include power supply contract restructuring negotiations with HQ and other third parties; preparation for an auction of the HQ Contract; the VJO-HQ ice storm arbitration; negotiation of an agreement for the sale of Vermont Yankee; a petition filed with this Board to establish rules and procedures to open up GMP's service territory to competitive retail sales of energy; and implementation of a corporate reorganization initiative. GMP seeks an extension of the stay of proceedings pursuant to the Second MOU Amendment to allow its management to continue to focus on and pursue these on-going cost reduction initiatives. Brock/Kvedar pf. 12/7/99 at 8-11.

2. In the Company's judgment, progress on its various cost mitigation efforts, though not final resolution, is likely within the next 12 months. Tr. 12/10/99 Vol. II at 41-42 (Brock).

3. The temporary rate surcharge now in effect, excluding the Pine Street surcharge, is 5.52 percent. Tr. 12/10/99 Vol. I at 32 (Kvedar).

4. The Second MOU Amendment provides for a 3% increase in rates, with service rendered on or after January 1, 2000. Second MOU Amendment at paragraph 8.

5. The rate of surcharge that would be in effect, as proposed in the Second MOU Amendment, would be calculated by compounding the existing 5.52% rate surcharge by 3%, and would equal approximately 8.7%. Tr. 12/10/99 Vol. I at 32 (Kvedar).

6. The Company expects the additional 3% temporary rate surcharge to generate \$4.6 million revenue during the year 2000. Tr. 12/10/99 Vol. I at 32 (Kvedar); Second MOU Amendment at 8; Brock/Kvedar pf. 12/7/99 at 4.

7. Continuation of the currently-effective 5.52% surcharge, without the additional 3% surcharge, would generate approximately \$9 million revenue during the year 2000. Tr. 12/10/99 Vol. I at 32-33 (Kvedar).

8. The Second MOU Amendment does not change any aspect of the Pine Street surcharge approved in the First MOU Amendment. Tr. 12/10/99 Vol. I at 33-34 (Kvedar).

9. Extension of the temporary rates will allow GMP to continue to participate in ongoing power supply cost reduction efforts, and implementation of the Company's internal reorganization efforts. These efforts will require substantial commitment of managerial and other resources. Such a commitment is unlikely if the Company is engaged in intensive rate

litigation or if the Company is forced to confront and resolve a continuous series of financial crises. Brock/Kvedar pf. 12/7/99 at 11-12.

10. If the final rates set by the Board in this docket are less than the temporary rates, GMP will refund any excess revenues collected under the temporary rates by adjusting revenue requirements and rates on a prospective basis, by customer class, to reflect the appropriate refund amounts. Second MOU Amendment at 8; Brock/Kvedar pf. 12/7/99 at 4.

11. Based on GMP's forecasts of 1999 and 2000 cash flows and earnings, the temporary rate increase provided in the Second MOU Amendment should provide GMP with additional revenues sufficient to permit GMP to provide its customers with safe and reliable service through 2000 and to preserve GMP's financial viability during that period. This amount of additional revenue was calculated using GMP's actual and forecasted 1999 cash flows and earnings and forecasted 2000 cash flows and earnings. These forecasts were reviewed by the Department, and reflect the best information available to GMP. Brock/Kvedar pf. 12/7/99 at 28-29; Exh. GMP-48 at NRB/AJK-4 (12/3/99 letter from Fleet to GMP).

12. According to GMP, even with the temporary rate increase contemplated by the Second MOU Amendment, GMP will still need to borrow funds during the remainder of 1999 and in 2000 in order to maintain adequate cash flow during certain months of the year. Brock/Kvedar pf. 12/7/99 at 15-16.

13. At present, the line of credit with Fleet Bank (and an associated bank) is GMP's only short-term source of working capital. Tr. 12/10/99 Vol. II at 45 (Brock).

14. Due to the seasonal nature of its revenues and costs, and to the intra-month timing differences between revenue receipts and accounts payable, the Company maintains a line of credit to provide sufficient working capital. Tr. 12/10/99 Vol. II at 6-8 (Brock).

15. According to GMP, its lending banks under its existing revolving credit agreement have recently become more concerned about GMP's financial condition. According to GMP, its lending banks advised GMP that they view GMP's financial condition to be extremely weak and its projected earnings for 2000, in the absence of a temporary rate increase, to be evidence of further deterioration in GMP's financial condition. At the request of GMP's lead bank, Fleet National Bank, GMP recently agreed to a reduction in GMP's available line of credit under its revolver from \$15 million to \$8.5 million, as a condition of any further lending.

Brock/Kvedar pf. 12/7/99 at 13-14.

16. Presently, the Company has access to \$8.5 million of working capital. Tr. 12/10/99 Vol. I at 37 (Brock).

17. Based on historical timing of presentment of bills, primarily its power supply cost bills, GMP will have bills coming due on Monday, the 20th of December, that will require it to borrow on the order of \$11.5 million. That amount is in excess of the Company's current access to liquid funds. Tr. 12/10/99 Vol. I at 37 (Brock).

18. Failure to timely pay power supply bills would constitute a default by GMP on contracts between itself and suppliers. Tr. 12/14/99 at 31 (Brock).

19. On December 3, 1999, Fleet informed GMP that the banks are prepared to increase the line of credit under the revolver to \$15 million, subject to certain conditions, including the express condition that the Board approve the temporary 3% rate increase provided in the Second MOU Amendment by December 20, 1999. Brock/Kvedar pf. 12/7/99 at 14-15; Exh. GMP-48 at NRB/AJK - 4.

20. The banks' agreement to restore the line of credit to \$15 million is essential to GMP's ability to satisfy the terms of the Second MOU Amendment relating to capital spending and plant maintenance, to maintain GMP's financial viability through 2000, and to assure availability of \$15 million in borrowing capacity to pay expected bills on December 20, 1999. Brock/Kvedar pf. 12/7/99 at 14-15.

21. The banks have informed GMP that they will make funds available up to \$15 million upon Board approval of the Second MOU Amendment. Brock/Kvedar pf. 12/7/99 at 15.

22. Although GMP's financial forecasts for 1999 and 2000 show end-of-month net bank borrowings only up to approximately \$7 million, during the course of any month, GMP's cash requirements hit a peak generally in the third week, when power supply bills come due. That peak demand on cash exceeds GMP's cash requirements at the end of the month. For example, in December 1999, GMP expects its cash requirements peak to occur on December 20 and to total approximately \$11 million. Brock/Kvedar pf. 12/7/99 at 15-16.

23. GMP's current revolving line of credit facility expires on June 22, 2000. Second MOU Amendment, ¶ 5. GMP expects and intends to pursue all available opportunities to

obtain a renewal or replacement of the revolver prior to its expiration next June, and to pursue other feasible and available financing options for working capital after expiration of the current facility. Brock/Kvedar pf. 12/7/99 at 16. According to GMP, and as demonstrated in its financial forecasts, GMP's cash flow pattern generally means that from April through October, GMP is able to satisfy its working capital requirements through internal cash, and without borrowing. Accordingly, GMP does not presently expect to need access to borrowed funds between April and October of 2000. GMP does, however, forecast the need for borrowings in the last quarter of 2000, and will need to have credit facilities in place to meet those needs. Brock/Kvedar pf. 12/7/99 at 16. With the cash flows, earnings and core return on equity provided by the temporary rate increase specified in the Second MOU Amendment, GMP believes it can present to its banks, and to other prospective lenders, a reasonable case for providing GMP with adequate credit facilities through December 31, 2000. Brock/Kvedar 15-16; tr. 12/10/99 Vol. I at 6-8 (Brock/Kvedar).

24. Upon approval of this Second MOU Amendment, the Company expects to have a mid-year 2000 cash balance in excess of \$6 million, and, at the end of 2000, to have roughly the same amount of funds drawn on a short-term credit facility as it will have drawn at the end of 1999. Exh. GMP-48 at NRB/AJK-3 (Financial Forecast).

25. GMP currently applies Financial Accounting Standard ("FAS") No. 71 in its financial reporting. FAS 71 generally allows public utilities that are regulated on a cost-of-service basis to capitalize costs when it is probable that such costs will be recovered through future revenues. GMP is eligible to continue to apply FAS 71 only so long as GMP and its auditors can conclude that GMP's regulated operations continue to be subject to cost-based ratemaking. Brock/Kvedar pf. 12/7/99 at 17.

26. In the Company's opinion, the applicability of FAS 71 is critically important to its ability to maintain its line of credit with commercial banks. Tr. 12/10/99 Vol. I at 37 (Brock).

27. The Company's financial statements must conform to Generally Accepted Accounting Principles. The Company believes that approval of the additional 3% increase in temporary rates is necessary to continue applying FAS 71. Tr. 12/14/99 at 7 and 12 (Griffin).

28. If GMP were required to cease application of FAS 71, GMP asserts that it would be required to take an immediate charge against earnings in the full amount of its outstanding net

regulatory assets, approximately \$24 million after taxes. This would have the effect of eliminating all of GMP's retained earnings and creating approximately \$12 million in negative retained earnings. GMP believes that this would probably result in a downgrade in GMP's credit rating to below investment grade. Brock/Kvedar pf. 12/7/99 at 19.

29. GMP believes that approval of the Second MOU Amendment will provide the Company and its auditors with adequate support for the continued application of FAS 71. Brock/Kvedar pf. 12/7/99 at 19-21.

30. The year 2000 financial forecast that the Company provides in support of the proposal to increase temporary rates by 3% reflects increasing costs that the Company faces, other than those attributable to the HQ/VJO contract. Tr. 12/10/99 Vol. I at 34 (Kvedar).

31. In the Company's judgment, approval of the Second MOU Amendment would demonstrate that the Vermont regulatory process recognizes and provides for recovery of rising costs. Tr. 12/14/99 at 10 (Griffin).

32. GMP's core ROE for 1998 was negative, and is projected to be approximately 2.7% for 1999, if the Second MOU Amendment is approved. Brock/Kvedar pf. 12/7/99 at 18.

33. If the Second MOU Amendment is approved, GMP's core ROE for 2000 is projected to be approximately 8.85%. Brock/Kvedar pf. 12/7/99 at 18.

34. The 3% increase in temporary rates is based on an earnings target within 250 to 300 basis points of the Company's authorized return on equity. The forecasted return of 8.85% falls within that range. Tr. 12/10/99 Vol. I at 56 (Kvedar).

35. According to GMP, a factor in the continued application of FAS 71 is evidence that GMP will have an opportunity to earn a reasonable rate of return within a reasonable time. GMP believes that the evidence supporting this conclusion includes the on-going power supply cost mitigation initiatives described above, and the Second MOU Amendment's provision for a final decision in this case by year end 2000. Brock/Kvedar pf. 12/7/99 at 18; tr. 12/10/99 Vol. II at 32 (Kvedar).

36. Under the Second MOU Amendment, the parties have stipulated and agreed that a provisional and non-final *pro forma* cost of service disallowance of HQ Contract costs is \$7,478,000 for GMP. GMP asserts that this amount is equivalent to the amount of HQ disallowance that would apply to GMP pursuant to the HQ disallowance methodology

employed by the Board in Docket No. 5983. Because this amount has been ascertained under the Second MOU Amendment, and because the Second MOU Amendment calls for the new temporary rates to be in effect until the end of 2000, GMP has included in its forecasts a FAS 5 write-down in 1999 in the amount of approximately \$7.48 million, to reflect the amount of the disallowance for 2000. Brock/Kvedar pf. 12/7/99 at 21-22; tr. 12/14/99 at 43-44 (Kvedar).²²

37. If the Board approves the Second MOU Amendment, the total amount of HQ disallowance for 2000 will be \$7.48 million. GMP intends to recognize the entire amount of this disallowance in 1999 under FAS 5. Brock/Kvedar pf. 12/7/99 at 22. In its forecasts for 2000, GMP has reversed the disallowance, with the effect of adding \$7.48 million to earnings in 2000. Brock/Kvedar pf. 12/7/99 at 22. GMP's recognition of a \$7.48 million FAS 5 disallowance in 1999 thus contributes to its ability to achieve its forecasted rate of return in 2000. Brock/Kvedar pf. 12/7/99 at 22; tr.12/10/99 Vol. II at 35-36 (Kvedar).

38. According to GMP, approval of the Second MOU Amendment, and the associated 1999 FAS 5 charge of \$7.48 million, will not cause GMP to fail any of its financial covenants under its First Mortgage Bonds. Brock/Kvedar pf. 12/7/99 at 22-23.

39. According to GMP, approval of the Second MOU Amendment will not require GMP to recognize a loss under FAS 5 related to HQ Contract disallowances for periods beyond December 31, 2000. Brock/Kvedar pf. 12/7/99 at 23.

40. The Company expects, in February, to be filing a rate decrease in its base rates when the Energy Efficiency Utility begins independently charging customers for its services. The forecasts underlying the Second MOU Amendment account for implementation of the Energy Efficiency Charge recently approved by the Board in Docket No. 5980, beginning with bills rendered in February 2000, as approved by the Board in its Order of November 19, 1999. GMP's forecasts accordingly assume that GMP's rates will be reduced to lower its annual revenues for 2000 by approximately \$2.5 million, effective with bills rendered February 1, 2000. Brock/Kvedar pf. 12/7/99 at 23-24; tr. 12/10/99 Vol. I at 30 (Kvedar).

41. GMP and the Department are currently in the final stages of negotiating a

22. While not endorsing the specific methodology employed by the parties, we find that the result is reasonable for the purposes of this docket.

Stipulation to Adjust Rates, to be filed in this rate case, to implement the rate reduction to which GMP agreed in Docket No. 5980. The implementation of the rate reduction will depend on the rates in effect on February 1, 2000. GMP intends to complete and file the Stipulation promptly after the Board approves the Second MOU Amendment. Brock/Kvedar pf. 12/7/99 at 23-24.

42. The Second MOU Amendment contemplates that the 3% increase in temporary rates will result in an additional \$1,000,000 for GMP to use in 2000 to enhance right of way maintenance and pole testing. The Company has agreed to use these funds in consultation with the Department's engineering staff. Brock/Kvedar pf. 12/7/99 at 4-5. The Second MOU Amendment also includes GMP's commitment to maintain its utility plant capital investment and plant maintenance expenditures at the levels specified in the financial forecasts on which the temporary rate increase is based, subject to adjustments to which the Department may agree. Brock/Kvedar pf. 12/7/99 at 4-5; tr. 12/10/99 Vol. II at 11-15 (Brock/Kvedar).

43. Pursuant to the Second MOU Amendment, GMP has agreed to provide the Department with monthly reports detailing the Company's actual spending and any projected changes to GMP's capital budgets, spending, as well as expenditures related to non-capital maintenance, repair, and refurbishment of transmission and distribution plant. Brock/Kvedar pf. 12/7/99 at 5-6.

44. GMP has agreed that it will present to the Board for appropriate consideration any award issued by the arbitration panel in the VJO-HQ ice storm arbitration prior to a final decision by the Board in this docket. Brock/Kvedar pf. at 6.

45. The temporary rate levels provided in the Second MOU Amendment should be sufficient to allow GMP to support its projected level of capital expenditures for 2000. Brock/Kvedar pf. 12/7/99 at 26.

46. Approval of the Second MOU Amendment should allow GMP to provide safe, reliable, adequate and efficient service and should permit GMP to respond to emergencies in the normal course of business. However, in the event of a severe weather emergency or other unforeseen occurrence, GMP may require additional temporary rates. Brock/Kvedar pf. 12/7/99 at 27.

47. By continuing the stay of proceedings until September, 2000, approval of the

Second MOU Amendment will allow GMP and others, including the Department and the Board, to direct more time and resources to efforts to lower the state's power supply costs. Such efforts will serve the interests of GMP's ratepayers and shareholders, and of the public in general. Brock/Kvedar pf. 12/7/99 at 11-12, 29-30.

48. These provisions, and others in the Second MOU Amendment, give the Board assurances that its approval of the Second MOU Amendment will not compromise the Company's ability to provide safe and reliable service to its customers. Findings 42-47, above.

49. The additional revenue collected under the temporary rates, through the end of 2000, will total approximately \$24 million. Tr. 12/10/99 Vol. I at 85-86 (Brock).

50. The MOU, as amended, would provide that refunds, if ordered, be issued prospectively through reductions in revenue requirement and rates on a prospective basis by customer class, to reflect the appropriate refund amounts. Second MOU Amendment at paragraph 8; tr. 12/10/99 Vol. I at 86-87 (Brock).

51. The Company has made preliminary inquiries into the availability and cost of posting a bond. Based on conversations with commercial banks and the Company's investment banker, it believes that those types of institutions would be unlikely to provide a bond, given the Company's present financial circumstances. One or more insurance companies may be willing to issue a bond, but would first require an underwriting process, and would probably require either cash collateral or other collateral that is already pledged. Until an underwriting review has been conducted, the cost of such a bond is uncertain and likely expensive. The parties to the agreement -- the Company, the Department, and IBM -- agree that a bond is not necessary. Tr. 12/10/99 Vol. II at 5-6 (Brock); tr. 12/14/99 at 40-41, 46 (Brock); Second MOU Amendment at paragraph 17.

52. The Board last modified the rates of GMP in June 1996 to reflect changes in allocations among customers classes. The reallocations ordered by the Board were the result of a settlement among several parties to the investigation, including the Company, the DPS, and IBM. Order of 5/23/96 in Docket 5857 .

53. The Company has reduced its dividends by 75% within the last two years. Tr. 12/10/99 Vol. I at 62 (Brock).

54. GMP's management has stated that they would not recommend any increase in

dividends to its Board of Directors during 2000. Tr. 12/10/99 Vol. II at 4-5 (Brock).

VI. Discussion

As we explained in our December 11, 1998 Order approving the original MOU, the applicable standard of review of a request for temporary rates is that set forth in 30 V.S.A. § 226(a), which provides that the Board shall approve a request for temporary rates:

... if it shall be made to appear to the satisfaction of the board, that the public interest requires a change in rates, charges or services, or that such change is necessary for the purpose of providing adequate and efficient service or for the preservation of the property of the public service company devoted to public use
....

Based on the evidence presented, we conclude that the proposed extension of the stay of proceedings and an additional 3% temporary rate increase is in the public interest. Therefore, we approve the Second MOU Amendment.

The Company is actively engaged in several, parallel efforts that intended to reduce its costs, to the benefit of its customers and the state as a whole. GMP's efforts, which we hope will bear fruit during the next 9 to 12 months, would be severely hindered by precipitation of a financial crisis at this time. Additionally, continued financial stability of GMP enables the other Vermont electric utilities to likewise pursue their own cost mitigation efforts, or to participate in joint efforts.

Although the continued and increased surcharge poses an additional burden on GMP's customers, we expect the Company to have resources sufficient to pay refunds, should that be necessary. In the meanwhile, the extension of the temporary rates will leave no doubt that GMP will have resources sufficient to provide adequate and efficient service, and that utility property that is devoted to public use will be protected during this period. We believe that this relatively modest increase strikes a reasonable balance between the interests of GMP's customers and shareholders. We believe that GMP's costs and rates must ultimately be reduced. However, the Company has already experienced two years of very low returns, has substantially cut its dividend, has trimmed its operating costs, and is actively engaged in power cost mitigation efforts. The MOU also explicitly recognizes an exclusion of \$7.48 million in HQ power costs during its term.

We commend the Company's and Department's continuing efforts to assure that adequate funds are expended on maintenance, operation and equipment in the near term. Likewise, in light of the Company's continuing public service obligations, we note the importance of the commitment, reflected in the MOU, to plan and make expenditures that will be adequate for the long term. In addition, we note that the Company has been candid and measured in this proceedings in its presentation of its financial position. Although, by necessity, time available for consideration of the request was compressed, the ratepayers and the Company were best served by a clear statement of the Company's position.

In approving the Second MOU Amendment, today's Order neither creates any precedent for this or any future proceeding, nor constitutes any finding or order that any costs are recoverable in rates. In particular, the Board wishes to make clear an observation very similar to the one made by IBM,²³ regarding the basis for the amount of the *pro forma* disallowance contained in the agreement. The matter of the Hydro-Quebec disallowance to be finally established is a matter that is not yet resolved. The fact that parties may have agreed on a disallowance amount that looks very precise, based upon a number of assumptions made about the Board's prior orders, is sufficient for the purposes of a settlement. However, we have not ourselves derived this number and make no finding as to the long term applicability of the parties' approach to this issue.

The final two issues to be addressed are whether to impose a bond, and whether to investigate GMP's current rate design as part of this docket.

We conclude that we need not require GMP to post a bond to secure repayment of possible future refunds. The MOU, as amended, provides, and we have approved, that any refunds will be returned to customers in the form of prospective rate reductions. Because any refunds will not require lump-sum cash payments, and because we retain continuing jurisdiction over the Company's retail rates, we believe that the Company should be capable of returning any overcharges to its ratepayers. Thus, we conclude that posting a bond is not necessary in light of the likely cost and difficulty of obtaining a bond.

Under the original MOU that we approved on December 11, 1998, GMP withdrew the

23. See Tr 12/10/99 Vol. I at 41-42.

rate design changes that it had proposed as part of its May 8, 1998, tariff filing. The MOU further provided that GMP would not submit another redesign or reallocation of its rates until after the next rate filing following the current one. Given the proposed one-year extension of the stay in this docket, VPIRG maintains that it is no longer appropriate to defer investigation of the Company's rate design until after the current proceeding. Accordingly, VPIRG requests that we include as a condition to any approval of the Second MOU Amendment a requirement that, within 45 days of that approval, the DPS complete a cost allocation study and submit a recommendation regarding whether GMP's rate design should be modified.²⁴

We conclude that, at this time, no such requirement need be imposed. GMP's current rate design is a relatively recent one: we reviewed and approved it in 1996.²⁵ Furthermore, there has been no demonstration that relevant class cost factors have changed significantly since our approval of the existing rate design. Finally, our usual, preferred practice is to determine a company's revenue requirements before addressing possible rate design changes; thus far, we have been presented with no substantial reason to justify deviation from that course. Our decision not to review GMP's rate design in the current docket is well within our discretion to manage the course of our proceedings.²⁶

24. VPIRG's Response to GMP's Proposed Order, 12/15/99.

25. Docket 5857, Order of 5/23/96.

26. *In re Green Mountain Power Corp.*, 147 Vt. 509, 516-519 (1986).

VII. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Second MOU Amendment to Memorandum of Understanding among Green Mountain Power Corporation, the Vermont Department of Public Service, and International Business Machines Corporation, filed December 3, 1999, ("Second MOU Amendment") is approved.

2. GMP is entitled to continue to collect temporary rates at the same level as GMP put into effect on a service rendered basis on December 15, 1998, plus an additional 3.0% increase on a service rendered basis on January 1, 2000. The 3% increase shall not reflect the Pine Street Surcharge that has been in rates.

3. The temporary rates shall remain in effect until the Board issues a final order in this docket, subject to any further request by GMP for emergency temporary rate relief. In the event that the Board issues a final order that allows a rate increase less than the temporary rates ordered herein, all sums collected in excess of such final rates shall be refunded by adjusting revenue requirements and rates on a prospective basis, by customer class, to reflect the appropriate refund amounts.

4. This docket is stayed until September 1, 2000, at which time the Board will resume this proceeding in accordance with the schedule proposed in the Second MOU Amendment. During the stay and, to the extent applicable, thereafter, the terms of the MOU and Second MOU Amendment will govern the conduct of the parties with respect to these proceedings and matters at issue in these proceedings.

5. The Board will schedule a conference with the parties to review the status of this matter in August 2000, to be confirmed by subsequent notice.

6. This Order does not constitute a finding or order that any costs included in GMP's support for this temporary rate increase are recoverable in rates or should receive any particular rate treatment in this or any future proceeding. The method used to determine these temporary rates shall not be construed as an appropriate means of determining final rates. This Order constitutes a determination pursuant to 30 V.S.A. § 226(a), after preliminary hearing, for the purpose of establishing temporary rates only. Regarding the establishment of

permanent rates, nothing in this Order, including the findings of fact and conclusions, shall bind the Board or the parties or have any *res judicata* or collateral estoppel effect except as necessary to implement the MOU and the Second MOU Amendment and to enforce this Order.

Dated at Montpelier, Vermont, this 17th day of December, 1999.

<u>s/Richard H. Cowart</u>)	
)	PUBLIC SERVICE
)	
<u>s/Suzanne D. Rude</u>)	BOARD
)	
)	OF VERMONT
<u>s/David C. Coen</u>)	

OFFICE OF THE CLERK

FILED: December 17, 1999

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.